Supreme Court, U.S.
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No. 95-483

In The

Supreme Court for the United States

October Term, 1995

BRUCE BUCHBINDER

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF

BRUCE BUCHBINDER
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Petitioner In Pro Se

QUESTIONS PRESENTED

1. Should the Court grant certiorari in a case where statements of fact and law go uncontested pursuant to waiver by Respondent, wherein Respondent had an obligation to respond (Rule 15.1) and by not responding renders rebuttal moot, pre-empting any further litigation?

2. Should the Court grant certiorari in a case where statements and allegations go unrefuted, and Respondent by remaining silent, thereby admits to the same?

3. Should the Court grant certiorari when the waiver filed by Respondent pursuant to Rule 15.1 and 15.5 effectively creates an Estoppel In Pais/Estoppel In Laches, thereby preventing Respondent from any further action?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
Cases	iii
Constitution, Statutes, and Codes	iii
Court rules	iii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	2
RESPONSE TO WAIVER	3
CONCLUSION	6
APPENDIX A	A-1

TABLE OF AUTHORITIES

CASES — Page

States S.S. Co. v. Permanente S.S. Corp., 231 F.2d 82 (1956) 6

U.S. v. Schneiderman, 102 Fed. Supp. 87 (1951) . . . 6

CONSTITUTION, STATUTES, AND CODES:

Amendment I of the United States Constitution 3

Amendment V of the United States Constitution . . . 3

Amendment IX of the United States Constitution . . . 3

Title 5 U.S.C. § 554 3

Title 5 U.S.C. § 702 3

Title 5 U.S.C. § 703 3

Title 5 U.S.C. § 706 . . . . . 3, 5

COURT RULES:

Supreme Court Rule 15.1 . . . . . 4, 5

Supreme Court Rule 15.5 . . . . . 3, 4, 5

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SUPPLEMENTAL BRIEF

PRELIMINARY STATEMENT

Petitioner Bruce Buchbinder comes before this Court stating there exists an intervening circumstance of a controlling effect, not previously presented to this Court. The intervening circumstance is set forth within the body of the Brief herein.

STATEMENT OF THE CASE

On September 21, 1995, Petitioner Bruce Buchbinder filed a Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, seeking the issuance of a supervisory opinion in review of the actions of the United States Tax Court and the United States Court of Appeals for the Ninth Circuit. The relief sought resulted from the subsequent dismissal of Buchbinder's case by the Ninth Circuit which effectively and subsequently denied Petitioner's constitutionally protected right to procedural and substantive due process, and right to meaningful access to the courts. In addition, Petitioner Buchbinder again raised the issue of the waiver filed by respondent in a case to which the instant case is bound, alleging that the lower court ignored the default and the estoppel created thereby, and thereby trampled on petitioner's Constitutional right to Redress of Grievances.

Petitioner presented a case against Respondent, complaining that the Ninth Circuit court imposed monetary sanctions for an allegation of misconduct that never actually took place coupled with a second subsequent sanction of dismissal. Petitioner stated in the Petition for Writ of Certiorari filed September 21, 1995, pages 7 and 8, that the issues in the first case (alleged misconduct) were confused by the Commissioner and that the Ninth Circuit adopted the Commissioner's confusion, sanctioning Buchbinder for a frivolous argument that Buchbinder never actually made. The first case (alleged misconduct) led to the present case (dismissal for nonpayment of sanctions), which is herewith on appeal. The instant case was dismissed on the contention that Buchbinder had failed to pay the sanction imposed by the Ninth Circuit in Buchbinder's first appeal. The Petitioner further contended that he was extremely punished by the Ninth Circuit Court of Appeals for something that he never actually did and that the punishment was so extreme that he had been substantially denied access to the

meaningful judicial review of his case.

Petitioner therefore alleged he was left without remedy in the denial of his due process rights pursuant to Title 5 U.S.C. §§ 554, 702, 703, and 706, as guaranteed by Amendment V of the United States Constitution; in the denial of his right to petition for Redress of Grievances as guaranteed by Amendment I, and in the denial of his right to meaningful access to the courts as guaranteed by Amendment IX.

Further, petitioner alleged that a default was created by waiver when respondent filed waiver in a case to which the instant case is bound.

On October 2, 1995, during pendency of petitioner's Petition for a Writ of Certiorari to this Court, the Solicitor General, Drew S. Days, III, who makes appearance and is counsel for Respondent, admitted to practice before this Court, appeared by brief and filed an express written waiver of right to file in opposition to Petitioner's asserted facts and conclusions. Respondent, in filing waiver pursuant to Supreme Court Rule 15.5, admitted and confirmed the validity and accuracy of Petitioner's statements and allegations. A copy of the waiver appears in Appendix A.

RESPONSE TO WAIVER

In his Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, Petitioner raised the question of whether the arbitrary dismissal of a litigant's cause of action before the courts, especially an action brought by a Pro Se litigant is the harshest sanction that can be imposed by

the courts, and whether such a sanction can rise to the level of denial of proper due process, denial of right to petition for a Redress of Grievances and denial of right to meaningful access to the courts. These questions remain unanswered in respect to the Petitioner. Petitioner also raised the question of whether the waiver filed by respondent in a case to which the instant case is bound constitutes a default concession to the validity of petitioner's claim, thus triggering Estoppel In Pais/Estoppel In Laches, and whether it attaches to the instant case. Subsequently, after failing to respond to allegations of the Petitioner that were before the Court, respondent has again defaulted pursuant waiver and is estopped from any further action in this cause.

Petitioner alleged that he had been deprived of his due process rights, deprived of his right to Redress of Grievances, and deprived of his right to meaningful access to the courts; Petitioner further alleged a default was created by waiver when respondent filed waiver in a case to which the instant case is bound; and further alleged respondent's failure to object in a timely fashion to petitioner's claim of default thereby officially establishes the default, and finally alleged that since a default has been established by waiver in a case to which the instant case is bound, therefore the instant case is controlled by such default. Again, after failing to respond to the above allegations, respondent has defaulted pursuant waiver and is estopped from any further action in this cause.

The Government, pursuant to Supreme Court Rule 15.1, was obligated as Respondent to address any perceived misstatements of fact or law before the Court. The Government expressly waived its right to respond pursuant to Supreme Court Rule 15.5. Such a waiver, in the face of Petitioner's asserted facts and conclusions, serves to leave the Petitioner's allegations uncontested before the Court and leaves the Respondent unable

to later act in contravention of those allegations.

The Government offered no defense against the accusations made by Petitioner and did not point out any perceived misstatements of law or fact *having an obligation* to do so pursuant to Supreme Court Rule 15.1. The Government specifically chose to waive that right pursuant to 15.5. Such a response is a plea of no contest entered willingly and without coercion. Respondent defaulted by tender of express waiver of its obligation to counter petitioner's version of the law and facts, thereby accepting petitioner's version of the law and facts to be true. Respondent did not correct the record as to what issues were proper to bring before the Court, and specifically did not question the basis for the petition, nor question the grounds upon which petitioner raised his petition, nor did the respondent bring to the Court's attention that petitioner raised no valid Due Process issue, nor did Respondent bring to the Court's attention that Petitioner was making assertions which had no valid basis in the record. In short, respondent made no attempt to protect the basis he had established in the lower courts. He made no attempt to show the Court that the issues being raised were based in frivolous and groundless argument, as he had contended in the lower courts. Instead, respondent conceded by waiver that petitioner had indeed not received the Scope of Review mandated by Title 5, Section 706; respondent thereby conceding that petitioner had not receive due process of law. Further, respondent has again acknowledged his default by waiver. Instead of correcting the record, respondent again waived his right to file a Brief in Opposition, rendering rebuttal moot on these issues, and defaulting again thereby. Petitioner's statements and assertions, unrebutted in the face of Rule 15.1, continue to stand as truth, thereby rendering respondent's rebuttal before the Court moot. Under the Common Law Rule of Reasonable Argument, Petitioner therefore claims a default-judgment against Respondent in the instant case and invokes an

Estoppel in Pais/Estoppel in Laches. U.S. v. *Schneiderman,* 102 Fed. Supp. 87 (1951) and *States S.S. Company v. Permanente S.S. Corp.*, 231 F.2d. 82 (1956).

CONCLUSION

Since Respondent has defaulted pursuant waiver, accepting Petitioner's version of the law and facts to be true, conceding not only that a prior default exists in a case to which the instant case is bound, but further conceding that Petitioner did not receive due process of law, there are therefore no grounds for further action in this case. The allegations are now decided in favor of the Petitioner, through default, as Respondent did not defend his position in either the instant case nor the case to which it was bound, pursuant waiver in both cases. Therefore, Respondent is enjoined from further action based on his default on these issues and Respondent's attempts to further this action are blocked by Estoppel In Pais/Estoppel In Laches.

However, Respondent's default and the estoppel created thereby does not resolve the issue of abuses to litigants in the lower courts such as those manifesting themselves in the instant case. Therefore, the Court should consider granting certiorari in this case.

Respectfully submitted,

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DATED: October 10, 1995

APPENDIX A

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

BUCHBINDER, BRUCE Petitioner	)	
vs .	)	No. 95-0483
COMMISSIONER OF INTERNAL REVENUE	)	

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the court.

DREW S. DAYS, III
SOLICITOR GENERAL

October 2, 1995

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